IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5747 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHOLANATH KALICHARAN CHAUBE
Versus
DISTRICT SUPDT OF POLICE AND ANOTHER

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Appearance :
MS NARSINGHANI for MR PC KAVINA for Petitioner.
MR HEMANT MAKWANA, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 12/01/2007

ORAL JUDGMENT

By filing this petition, the petitioner has prayed for appropriate direction to quash and set aside the impugned order of suspension dated 11-7-1980 and to direct the respondents to take the petitioner back in service. Subsequently, by amending the petition, the petitioner has also

prayed that an order of compulsory retirement, which is at Annexure-E to the petition dated 27-9-1990 passed by respondent no.1 may be set aside.

2. The facts leading to the petition are as under :

3. The petitioner, who was serving as an unarmed Head Constable was subjected to departmental inquiry on the ground that while he was on duty one prisoner had ran away from the police custody. By an order dated 16-9-1978, the petitioner was subjected to punishment of compulsory retirement. It seems that an order of compulsory retirement was challenged by the petitioner by filing Regular Civil Suit No.154/1978, however, said suit was dismissed by the Civil Court on 29-8-1983 against which the petitioner preferred an appeal being Regular Civil Appeal No.42/1983. It is pointed out to the Court by both the learned advocates that the said appeal was dismissed on 30-10-1985.

4. Thereafter, by his letter dated 2-11-1987, the petitioner informed the department that since the appeal is dismissed he is not willing to proceed further with the matter and he has no objection with regard to the order of compulsory retirement and that he is accepting the order of the Court. Aforesaid letter dated 2-11-1987 written by the petitioner is at Annexure-D in the compilation. The effect of the same is that order of compulsory retirement passed by the department in 1978 is accepted by the petitioner. However, in view of the interim relief granted by the Civil Court in favour of the petitioner, the petitioner was continued in service. Thereafter, the petitioner was involved in a criminal case under Section 331, 504 and 506 of Indian Penal Code, which was registered at Chorvad Police Station, this fact is mentioned in the affidavit-in-reply at page 24. In connection with that case, the petitioner was arrested and, therefore,

he was placed under suspension. In the aforesaid criminal case, the petitioner was convicted on 17-1-1981 and was subjected to imprisonment of three years with fine of Rs.500/-, however, since there was a stay against the order of compulsory retirement, the department continued the petitioner in service on Re.1/- token pay. It is pointed out that subsequently in appeal filed against conviction order, the petitioner was acquitted on 28-6-1990.

5. It is required to be noted that, initially, this petition was filed challenging only suspension order passed in view of the involvement of the petitioner in a criminal case and subsequently, the order of compulsory retirement is also challenged by way of amendment. It is required to be noted that in view of the letter of the petitioner accepting the order of Civil Court in connection with compulsory retirement, by order dated 27-9-1990, which is at Annexure-E to the petition, the petitioner was ordered to be compulsorily retired with effect from 18-9-1978, i.e., the date on which the original order dated 16-9-1978 was received by the petitioner.

6. On behalf of the petitioner, learned advocate Ms.Narsinghani submitted that in view of order dated 27-9-1990, which is at Annexure-E, it can be presumed that the petitioner was in service upto that date and order of compulsory retirement came into effect only from that date and till that date, the petitioner is required to be paid salary and other benefits.

7. This petition is resisted by the department by filing reply, which starts from page 23 onwards.

8. In my view, this petition is absolutely misconceived. It is required

to be noted that against the order of compulsory retirement, the petitioner had filed a civil suit and continued in service by virtue of interim order of the Civil Court. The petitioner himself wrote to the department on 2-11-1987 that he is accepting the order of compulsory retirement and that is how by order at Annexure-E dated 27-9-1990, the department gave effect to the compulsory retirement order dated 16-9-1978 and, accordingly, the petitioner was ordered to be relieved by implementing said order with effect from 18-9-1978. Simply because the petitioner has continued by way of stay order of the Civil Court and, thereafter, he was placed under suspension in view of pendency of criminal case, can never be a favourable ground for the petitioner, as it is not in dispute that ultimately by order dated 27-9-1990, the department gave effect to the order of compulsory retirement dated 16-9-1978 by giving retrospective effect.

9. In fact, this is a case in which the department could have recovered salary and other benefits, which the petitioner got from 18-9-1978 onwards. It is not in dispute that, moment the stay was vacated, the department gave effect to the order of compulsory retirement. When the petitioner has accepted the order of compulsory retirement and when the stay of the Civil Court was lifted, the department was justified in implementing the order of compulsory retirement from 18-9-1978 and in its wisdom, the department has not decided to recover the salary, which the petitioner might have received between 18-9-1978 till 27-9-1990, when order at Annexure-E was passed.

10. Therefore, there is no substance in the argument of learned advocate for the petitioner that the petitioner should be treated to be continued in service upto 1990. At this stage, it is required to be noted that while drafting the petition, the petitioner has attempted to mislead

the Court, as the date of the order of compulsory retirement is mentioned as 16-9-1990 giving an impression that the petitioner is ordered to be compulsorily retired from that date. Since the aforesaid date is mentioned, the Court had asked learned AGP to produce original file to find out the correct date of order of compulsory retirement, and going through the file, it is found that the petitioner has tried to mislead the Court, as from perusal of the file it is clear that original order of compulsory retirement was passed on 16-9-1978 and not on 27-9-1990.

11. At this stage, Ms.Narsinghani, learned advocate for the petitioner submitted that since initially some other advocate was appearing in this matter, there appears to be some typing mistake. She has also submitted that the petitioner has informed the department by his letter dated 23-4-1986 that since his appeal is dismissed which was preferred against the order of compulsory retirement, he is accepting said order and his pension papers may be prepared, therefore, it can be said that the petitioner was fair in his approach. Inspite of this, it is quite interesting to note that an amendment was made in this petition challenging the order of compulsory retirement. It is very unfortunate that even though the petitioner himself has sent a letter on 2-11-1987 that he is accepting the order of compulsory retirement still he has filed this writ petition in 1990 challenging the order of suspension, which was passed against the petitioner in view of pendency of some criminal proceedings.

12. Be that as it may, now the facts are not in dispute and it is clear that order of compulsory retirement is dated 16-9-1978, and it was given effect from 18-7-1978, however, because of the interim relief granted by the Civil Court, the petitioner had continued in service and ultimately, on termination of said proceedings, the department gave effect to aforesaid order of compulsory retirement and even the petitioner has

accepted such order and a letter in that regard has been written by the petitioner on 2-11-1987. In that view of the matter, after 16-9-1978, the petitioner was not entitled to any benefit and if he has continued to get such benefit by virtue of interim order, it may not give any right in favour of the petitioner and it can never be said that the petitioner has continued in service or that compulsory retirement order was passed on 27-9-1990. It is admitted even by learned advocate for the petitioner that the order of compulsory retirement was passed on 16-9-1978 and not on 16-9-1990 as mentioned in Annexure-B.

13. Considering the aforesaid aspect, the department was justified in giving effect to the order of compulsory retirement from 16-9-1978. It is also pointed out by learned AGP that an amount of Rs.1,62,528/- is paid to the petitioner on 7-1-1994 towards his retiral benefits and a receipt to that effect is also produced along with the affidavit filed on behalf of the department.

14. Considering the aforesaid aspect, there is no question of examining the merits of order of compulsory retirement as the petitioner has himself accepted said order by writing a letter, which is on record. The fact that the petitioner was continued in service by virtue of interim order of the Court does not give any right in favour of the petitioner. In view of all these facts, no relief can be given to the petitioner either regarding compulsory retirement or regarding suspension, hence, this petition is dismissed. Rule is discharged. The petitioner is directed to pay cost of Rs.5,000/- to the department forthwith and it will be open for the department to recover such amount from the petitioner.

(P.B.Majmudar, J.)

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